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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE Supreme Court of the United States

DANIEL C. BARRISH. ESQUIRE
Petitioner

v.

OFFICE OF DISCIPLINARY COUNSEL
Respondent

On Petition for Writ of Certiorari To The Pennsylvania Supreme Court

—

PETITION FOR WRIT OF CERTIORARI____

Daniel C. Barrish. Esquire

1912 Guernsey Avenue

Abington Pennsylvania. 19001

(215) 886-7870

QUESTION

Was Petitioner, a party attorney in Pennsylvania disciplinary proceedings, deprived of his Fifth Amendment and Fourteenth Amendment rights to due process and equal protection of the law when the Pennsylvania Supreme Court. designated both by statute and court rule as the final arbiter. with de novo jurisdiction, in attorney disciplinary matters, rendered its March 15, 2006. Order. suspending Petitioner from the practice of law for five years with no reference therein to any findings of fact or conclusions of law. independent or incorporated, the charges filed. violations determined or basis for penalty imposed?

PARTIES TO THE PROCEEDINGS

All parties to the proceeding in the Court whose judgment is sought to be reviewed are included in the caption.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

No party involved in this matter is a corporate entity thus negating the necessity of a Corporate Disclosure Statement.

OPINIONS

This Petition deals with two Orders of the Pennsylvania Supreme Court dated respectively March 15, 2006, and April 12, 2006, for which no opinions were written

STATEMENT OF JURISDICTION

A state court of last resort (Pennsylvania Supreme Court) has decided important questions of Federal law that have not been, but should be, settled by the United States Supreme Court, and has decided important Federal questions in ways that conflict with relevant decisions of this Most Honorable Court.

CONSTITUTIONAL PROVISIONS INVOLVED

This matter deals with Petitioner's deprivation of his right to "due process" assured him by the Fifth Amendment (Appendix "C") to the United States Constitution as derived through the Fourteenth Amendment. (Appendix "D") and his right to "equal protection of the law" as directly provided him by said Fourteen Amendment.

The Fifth Amendment to the United States Constitution reads in relevant part that no person can be "deprived of life, liberty, or property, without due process of law".

The Fourteenth Amendment reads in relevant part that no state "shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

Petitioner, the subject of a professional misconduct order, is an attorney who has actively practiced law in Pennsylvania for thirty-eight (38) years, who always has been in good standing with that state's Bar, and who had never been charged with, much less convicted of, any professional misconduct until the matter which brings this case to bar.

Pennsylvania has both by statute and rules of court an attorney disciplinary procedure involving appointed disciplinary counsel prosecuting matters before the likewise appointed Attorney Disciplinary Board. Disciplinary charges were lodged against Petitioner and on December 6, 2005, the said Board, after hearing, forwarded to the Pennsylvania Supreme Court a report concluding misconduct with penalty recommendation. Petitioner filed timely written exceptions; disciplinary counsel filed a timely reply. There was no oral argument (precluded by court rules) and on March 15, 2006, the Pennsylvania Supreme Court handed down a disciplinary order (Appendix "B"). Petitioner thereafter filed a timely Petition for Reconsideration which set forth the issues raised herein. By Order dated April 12, 2006, (Appendix "A"), the Pennsylvania Supreme Court denied the relief sought and it is from that Order that Petitioner seeks relief.

REASONS FOR GRANTING THE PETITION

There is no doubt in Pennsylvania that the Pennsylvania Supreme Court has de novo jurisdiction in attorney disciplinary matters. In a very recent Pennsylvania Supreme Court disciplinary decision dated December 28, 2005, captioned as In The Matter Of Julius C. Melograne, docketed as No. 820 Disciplinary Docket No. 3; Disciplinary Board No. 62 DB 2003, on page 3 the Honorable Madame Justice Newman noted that "in attorney discipline matters, we exercise de novo review. We are not bound by the findings and recommendations of the hearing committee or the Board, although we give both substantial deference." citing Office of Disciplinary Counsel v. Chung, 695 A.2d 405 (1997). In Office of Disciplinary Counsel v. Valentino, No. 306 Disciplinary Docket No. 3, No. 26 DB 97 Disciplinary Board, the Pennsylvania Supreme Court stated that "in attorney disciplinary matters, our review is de novo," citing Pa.R.D.E. 208 (e). ("review by the Supreme Court shall be de novo")

Notwithstanding its self-recognized de novo jurisdiction in attorney disciplinary matters, the Pennsylvania Supreme Court rendered its March 15, 2006, disciplinary order with no reference therein, either independent or by incorporation, to charges filed, violations determined, findings of fact, conclusions of law or basis for the punishment imposed.

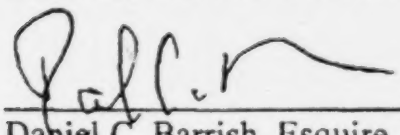
By so acting it is most respectfully submitted that the Pennsylvania Supreme Court deprived Petitioner "of life, liberty, or property, without due process of law," as guaranteed him by both the Fifth and Fourteenth Amendments to the United States Constitution by depriving him, inter-alia, and others, of the ability to determine whether in fact there actually was any such deprivation.

It is further most respectfully submitted that there is a further very significant Fourteenth Amendment violation caused by the March 15, 2006, attorney disciplinary order, because by failing actually to exercise, not just in name, its de novo jurisdiction, the Pennsylvania Supreme Court did "deny to any person within its jurisdiction the equal protection of the laws." In effect equal protection means that the Pennsylvania Supreme Court must treat similarly situated individuals in a similar manner and by failing in actuality to exercise its de novo jurisdiction it did not.

CONCLUSION

WHEREFORE Your Petitioner respectfully prays that this Most Honorable Court grant a Writ of Certiorari.

RESPECTFULLY SUBMITTED BY:



Daniel C. Barrish, Esquire

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on April 18, 2006

Daniel C. Barrish, Esquire

1912 Guernsey Ave.

Abington, Pa. 19001

Tele: 215.886.7870

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Petitioner

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA

Office of Disciplinary Counsel.

Petitioner

Daniel C. Barrish

Respondent

No. 1103 Disciplinary Docket No. 3 – Supreme Court

No. 130 DB 2004 – Disciplinary Board

Attorney Registration No. 08718

(Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 12th day of April, 2006, the Petition for Reconsideration is denied and the Petition for Confirmation of Stay is dismissed as moot.

Madame Justice Baldwin did not participate in this matter.

A True Copy Patricia Nicola

As of April 12, 2006

Attest: Patricia Nicola /s/

Chief Clerk

Supreme Court of Pennsylvania

APPENDIX B

IN THE SUPREME COURT OF PENNSYLVANIA

Office of Disciplinary Counsel,

Petitioner

Daniel C. Barrish

Respondent

No. 1103 Disciplinary Docket No. 3 – Supreme Court

No. 130 DB 2004 – Disciplinary Board

Attorney Registration No. 08718

(Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 15th day of March, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 6, 2005, the Petition for Review and response thereto it is hereby:

ORDERED that Daniel C. Barrish be and he is suspended from the Bar of this Commonwealth for a period of five years. and he shall comply with all provisions of Rule 217 Pa. R.D.E.

It is furthered ORDERED that respondent shall pay costs of the Disciplinary Board pursuant to Rule 208(g). Pa. R.D.E.

Madame Justice Baldwin did not participate in this matter.

A True Copy Patricia Nicola

As of March 15, 2006

Attest: Patricia Nicola /s/

Chief Clerk

Supreme Court of Pennsylvania

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX D

Amendment XIV

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or

Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath. as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State. to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law. including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.